(3)

Supreme Court, U.S.
FILED
JAN 13 1997
CLERK

No. 96-858

In The

Supreme Court of the United States

October Term, 1996

MICHAEL SALVAGNI,

Petitioner,

vs.

SUSAN WICKLUND, M.D., et al,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF AMICUS CURIAE OF THE STATES OF NEBRASKA, CALIFORNIA GEORGIA AND VIRGINIA IN SUPPORT OF PETITIONER

DON STENBERG
Attorney General
State of Nebraska
*STEVE GRASZ
Deputy Attorney General
2115 State Capitol Building
Lincoln, Nebraska 68509-8920
(402) 471-2682

*Counsel of Record

[Additional Counsel Listed On Inside Cover]

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

19 pp

DANIEL E. LUNGREN
Attorney General
State of California

MICHEAL J. BOWERS
Attorney General
State of Georgia

JAMES S. GILMORE
Attorney General
State of Virginia

TABLE OF CONTENTS

Page

Table of Authorities ii

Interest of the *Amici* 1

Summary of Argument 3

Argument:

THE COURT SHOULD REVIEW THE NINTH CIRCUIT'S JUDGMENT BECAUSE THE COURT OF APPEALS APPLIED A CLEARLY ERRONEOUS LEGAL STANDARD IN EVALUATING THE CONSTITUTIONALITY OF A PARENTAL NOTICE STATUTE 6

Conclusion 14

TABLE OF AUTHORITIES

Page

CASES:

Bellotti v. Baird, 443 U.S. 622 (1979) 4, 7, 8, 9, 10

City of Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416 (1983) 7, 10

Glick v. McKay, 937 F.2d 434 (9th Cir. 1991) ..... *passim*

H.L. v. Matheson, 450 U.S. 398 (1981) 3, 4, 11

Janklow v. Planned Parenthood, Sioux Falls Clinic, 116 S.Ct. 1582 (1996) 13

Hodgson v. Minnesota, 497 U.S. 417 (1990) ...2, 5, 13, 14

Ohio v. Akron Center for Reproductive Health, 497 U.S. 502 (1990) 2, 5, 12, 13, 14

Planned Parenthood Ass'n of Atlanta, Inc. v. Miller, 934 F.2d 1462 (11th Cir. 1991) 2, 5

Planned Parenthood Ass'n of Kansas City, Missouri, Inc. v. Ashcroft, 462 U.S. 476 (1983) 7

Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992) 7

Wicklund v. Salvagni, 93 F.3d 567 (9th Cir. 1996) 2, 3, 5, 6, 7, 10

STATUTES:

Ark. Code Ann. § 20-16-801 *et seq.* (Michie 1991) 1

Ark. Code Ann. § 20-16-804(1)(B) (Michie 1991) 1

Del. Code Ann. tit. 24, § 1780 *et seq.* (Interim Supp. 1995) 1

Del. Code Ann. tit. 24, § 1784(b) (Interim Supp. 1995) 1

TABLE OF AUTHORITIES – Continued

Page

Ga. Code Ann. § 15-11-110 *et seq.* (1994) 1

Ga. Code Ann. § 15-11-114(c)(2) (1994) 1

Ill. Comp. Stat. Ann. ch. 750, § 70/1 *et seq.* (Michie Supp. 1996) 1

Ill. Comp. Stat. Ann. ch. 750, § 70/25(d)(2) (Michie Supp. 1996) 1

Iowa Code Ann. § 135L.4 (West Legis. Serv. No. 1, 1996) 1

Iowa Code Ann. § 135L.4(3)(e)(2) (West Legis. Serv. No. 1, 1996) 1

Kan. Stat. Ann. § 65-6705 (Supp. 1995) 1

Kan. Stat. Ann. § 65-6705(e)(2) (Supp. 1995) 1

Minn. Stat. Ann. § 144.343 (West 1989) 1

Minn. Stat. Ann. § 144.343(6)(c)(i) (West 1989) 1, 13

Mont. Code Ann. § 50-20-201 *et seq.* (1995) 1

Mont. Code Ann. § 50-20-212(5)(b) (1995) 1, 6, 13

Neb. Rev. Stat. Ann. § 71-6901 *et seq.* (Michie 1995) 1

Neb. Rev. Stat. Ann. § 71-6903(1) (Michie 1995) 1

Nev. Rev. Stat. Ann. § 442.255 (Michie 1995) 1

Nev. Rev. Stat. Ann. § 442.255(2)(c) (Michie 1995) ...1, 3

Nev. Rev. Stat. Ann. § 442.2555 (Michie 1995) 1

Ohio Rev. Code Ann. § 2151.85 (Anderson 1994) 1

Ohio Rev. Code Ann. § 2151.85(C)(2) (Anderson 1994) 1, 13

W. Va. Code § 16-2F-1 *et seq.* (1994) 1

W. Va. Code § 16-2F-4(f)(2) (1994) 1

INTEREST OF THE *AMICI*

Twelve States have enacted parental notice statutes with judicial bypass procedures.[1] Each of those statutes contains language substantially similar to that found in Montana law for determining the circumstances under which a court, in a judicial bypass hearing, may waive notice to the parent or guardian of an immature minor seeking an abortion.[2] Under the Montana "Parental Notice of Abortion Act," a youth court is authorized to waive notice to the parent or guardian of an immature, pregnant minor of her decision to obtain an abortion if the minor demonstrates that "notification . . . is not in [her] best interests." Mont. Code Ann. § 50-20-212(5)(b).

On the authority of its earlier decision in *Glick v. McKay*, 937 F.2d 434 (9th Cir. 1991), the court of appeals

---

[1] Ark. Code Ann. § 20-16-801 *et seq.* (Michie 1991); Del. Code Ann. tit. 24, § 1780 *et seq.* (Interim Supp. 1995); Ga. Code Ann. § 15-11-110 *et seq.* (1994); Ill. Comp. Stat. Ann. ch. 750, § 70/1 *et seq.* (Michie Supp. 1996); Iowa Code Ann. § 135L.4 (West Legis. Serv. No. 1, 1996); Kan. Stat. Ann. § 65-6705 (Supp. 1995); Minn. Stat. Ann. § 144.343 (West 1989); Mont. Code Ann. § 50-20-201 *et seq.* (1995); Neb. Rev. Stat. Ann. § 71-6901 *et seq.* (Michie 1995); Nev. Rev. Stat. Ann. §§ 442.255, 442.2555 (Michie 1995); Ohio Rev. Code Ann. § 2151.85 (Anderson 1994); W. Va. Code § 16-2F-1 *et seq.* (1994).

[2] Ark. Code Ann. § 20-16-804(1)(B); Del. Code Ann. tit. 24, § 1784(b); Ga. Code Ann. § 15-11-114(c)(2); Ill. Comp. Stat. Ann. ch. 750, § 70/25(d)(2); Iowa Code Ann. § 135L.4(3)(e)(2); Kan. Stat. Ann. § 65-6705(e)(2); Minn. Stat. Ann. § 144.343(6)(c)(i); Neb. Rev. Stat. Ann. § 71-6903(1); Nev. Rev. Stat. Ann. § 442.255(2)(c); Ohio Rev. Code Ann. § 2151.85(C)(2); W. Va. Code § 16-2F-4(f)(2).

held that the Montana parental notice statute is unconstitutional. *Wicklund v. Salvagni*, 93 F.3d 567, 571-72 (9th Cir. 1996). In *Glick*, the Ninth Circuit struck down the Nevada parental notice statute because it "impermissibly constricted the meaning of 'best interests,' " in not allowing the court, in a bypass hearing, to waive notice to the parent of an immature minor if it determined that the abortion was in her best interests. 937 F.2d at 442. In so ruling, the court of appeals equated *notice* statutes with *consent* statutes and required the former to comply with the constitutionally-mandated standards for the latter, even though the decisions of this Court clearly have held otherwise.

As precedents which other circuit courts may consider, the Ninth Circuit's decisions in *Glick* and *Wicklund* may undermine the enforceability of parental notice statutes in several States. Although the Minnesota, Ohio and Georgia statutes, having been upheld either by this Court, *Hodgson v. Minnesota*, 497 U.S. 417 (1990), *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502 (1990) ("*Akron Center II*"), or by another court of appeals,

Planned Parenthood Ass'n of Atlanta, Inc. v. Miller, 934 F.2d 1462 (11th Cir. 1991), presumably are immune from further challenge, the constitutionality of the parental notice statutes in Arkansas, Delaware, Illinois, Iowa, Kansas, Nebraska and West Virginia may be called into question on the authority of the Ninth Circuit's erroneous judgments in this case and in *Glick*. Moreover, other States within the Ninth Circuit that may wish to enact parental notice statutes may be deterred from doing so because of their uncertainty regarding what standards for

a judicial bypass are constitutionally required. To eliminate this uncertainty and to provide needed guidance to the States, *amici* respectfully request the Court to grant Montana's petition for *certiorari*.

SUMMARY OF ARGUMENT

On the basis of its earlier decision in *Glick v. McKay*, 937 F.2d 434 (9th Cir. 1991), the court of appeals held that the Montana parental notice statute is unconstitutional. *Wicklund v. Salvagni*, 93 F.3d 567, 571-72 (9th Cir. 1996). In *Glick*, the court of appeals considered the constitutionality of the Nevada parental notice statute. Like the statute at issue here, the Nevada statute permitted a court in a judicial bypass hearing to waive notice to the parent or guardian of an immature minor only if it determined that notice was not in her best interests. Nev. Rev. Stat. Ann. § 442.255(2)(c). The statute, however, did not allow notice to be waived if the court determined that an abortion was in the minor's best interests.

The Ninth Circuit recognized in *Glick* that this Court has " 'expressly declined to equate notice requirements with consent requirements.' " 937 F.2d at 441 (quoting *H.L. v. Matheson*, 450 U.S. 398, 411 n.17 (1981)). Nevertheless, the court struck down the Nevada parental *notice* statute because it did not "satisfy the requirements for a parental *consent* statute." 937 F.2d at 436 (emphasis supplied). *Id.* at 442 ("the Nevada bypass procedure fails to meet the requirements for a *consent* statute bypass") (emphasis supplied). The court held that "a bypass procedure must allow the minor to show that even if she

cannot make the decision herself, the desired abortion would be in her best interests." *Id.* at 438. The Nevada statute, however, allowed a court to consider an immature minor's best interests "only with respect to the possible consequences of parental notification," and not with respect to the performance of the abortion itself. *Id.* at 439. "The best interests of a minor female in obtaining an abortion," the court explained, "may encompass far more than her interests in not notifying a parent of the abortion decision." *Id.* Quoting from Justice Powell's plurality opinion in *Bellotti v. Baird*, 443 U.S. 622 (1979), the court of appeals stated that " '[i]f, all things considered, the court determines that an abortion is in the minor's best interests, she is entitled to court authorization without any parental involvement.' " *Glick*, 937 F.2d at 439 (quoting *Bellotti v. Baird*, 443 U.S. at 648). The court of appeals concluded that "the Nevada statute impermissibly narrows the *Bellotti* 'best interests' criterion, and is unconstitutional." *Glick*, 937 F.2d at 439. In striking down the Montana parental notice statute, the Ninth Circuit held that it was bound by its decision in *Glick*. *Wicklund*, 93 F.3d at 571-72.

Amici submit that the Ninth Circuit's opinions in *Glick* and *Wicklund* overlooked the obvious distinctions between parental *notice* laws and parental *consent* laws and erroneously held that the former are subject to the same constitutional standards as the latter, in the face of contrary statements by this Court. *See Matheson*, 450 U.S. at 411 n.17; *Hodgson*, 497 U.S. at 445 (Opinion of Stevens, J., in which O'Connor, J., concurred), *id.* at 496 (Opinion of Kennedy, J., concurring in the judgment in part and dissenting in part, in which Rehnquist, C.J., White, J., and

Scalia, J., concurred). In the case of an immature minor, the issue to be decided in a judicial bypass hearing conducted under a parental *consent* statute is whether the court may waive the requirement of a parent's consent and authorize the abortion on behalf of the minor based on her demonstration that the abortion would be in her best interests; the issue to be decided in a bypass hearing conducted under a *notice* statute, however, is whether the court may waive notice to the minor's parent(s) based on her showing that notice would not be in her best interests. Unlike a consent statute, under a notice statute no parent has the authority to prevent the minor from obtaining an abortion. Because the ultimate issue to be decided is different (waiver of consent in one case; waiver of notice in the other), the focus of the court's "best interests" inquiry necessarily differs.

The Ninth Circuit also ignored the fact that the Minnesota and Ohio parental notice statutes upheld by this Court in *Hodgson* and *Akron Center II*, respectively, are virtually indistinguishable from the Nevada and Montana statutes struck down by the Ninth Circuit in *Glick* and *Wicklund*, respectively. Finally, the Ninth Circuit's decision in this case is in conflict with the Eleventh Circuit's decision in *Planned Parenthood v. Miller*, 934 F.2d 1462, 1476 n.21 (11th Cir. 1991), upholding the Georgia parental notice statute. For all of these reasons, *amici* ask that this Court grant Montana's petition for *certiorari*.

ARGUMENT

THE COURT SHOULD REVIEW THE NINTH CIRCUIT'S JUDGMENT BECAUSE THE COURT OF APPEALS APPLIED A CLEARLY ERRONEOUS LEGAL STANDARD IN EVALUATING THE CONSTITUTIONALITY OF A PARENTAL NOTICE STATUTE.

The Montana parental notice act permits a youth court to waive notice to the parent of an immature, pregnant minor of her decision to obtain an abortion if the minor demonstrates that "notification . . . is not in [her] best interests." Mont. Code Ann. § 50-20-212(5)(b). The Act, which requires notice to, not the consent of, either parent (or the minor's legal guardian), does not authorize a waiver upon a showing by an immature minor that an abortion would be in her best interests. The court of appeals, relying upon its earlier decision in *Glick v. McKay*, 937 F.2d 434 (9th Cir. 1991), invalidating similar language in the Nevada parental notice statute, held that the "best interests" standard under the Montana Act is constitutionally deficient. *Wicklund v. Salvagni*, 93 F.3d 567 (1996). Quoting its opinion in *Glick*, the court in *Wicklund* held that the Montana parental notice statute " 'impermissibly constricted the meaning of "best interests," ' " by not allowing an immature minor to show in the bypass proceeding that an abortion "was in her best interests." *Wicklund*, 93 F.3d 567 at 571 (quoting *Glick*, 937 F.2d at 442). The court of appeals held, in effect, that an immature, pregnant minor *must* be allowed to obtain an abortion without notifying her parents even in those situations in which notification *would* be in her best interests. This holding is not required by the Constitution or any decision of this Court.

The Ninth Circuit's decisions in *Glick* and *Wicklund* effectively held that parental *notice* statutes are the functional equivalents of parental *consent* statutes and, therefore, are subject to the same standards for determining the adequacy of the judicial bypass procedure. *Glick*, 937 F.2d at 438-39; *Wicklund*, 93 F.3d at 571-72. That holding, in turn, was apparently based on a misreading of Justice Powell's plurality opinion in *Bellotti v. Baird*, 443 U.S. 622 (1979).

In *Bellotti*, this Court struck down the Massachusetts parental consent statute because it did not provide for an adequate judicial bypass procedure. Noting "the unique nature and consequences of the abortion decision," a plurality of the Court held that "if the State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained." 443 U.S. at 643 (Opinion of Powell, J.). In such a proceeding, the pregnant minor must be given the opportunity to show either "that she is mature enough and well enough informed to make her abortion decision . . . independently of her parents' wishes," or "that even if she is not able to make this decision independently, the desired abortion would be in her best interests." *Id.* at 643-44. The Court has continued to apply this standard in evaluating parental consent statutes.[3]

---

[3] *See City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 439-42 (1983) ("*Akron Center I*"); *Planned Parenthood Ass'n of Kansas City, Missouri, Inc. v. Ashcroft*, 462 U.S. 476, 490-93 (1983) ("*Ashcroft*"); *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 899-900 (1992).

In *Bellotti*, the Court also struck down a requirement in the Massachusetts parental consent law that both parents be given prior notice of any judicial bypass proceedings in which the pregnant minor might seek a court-authorized abortion. This requirement, according to the plurality opinion, "would impose an undue burden upon the exercise by minors of the right to seek an abortion." 443 U.S. at 647 (Opinion of Powell, J.).

> [M]any parents hold strong views on the subject of abortion, and young pregnant minors, especially those living at home, are particularly vulnerable to their parents' efforts to obstruct both an abortion and their access to court. It would be unrealistic, therefore, to assume that the mere existence of a legal right to seek relief in . . . court provides an effective avenue of relief for some of those who need it the most.

Id. In ruling that this requirement was unconstitutional, Justice Powell concluded:

> [E]very minor must have the opportunity – if she so desires – to go directly to a court without first consulting or notifying her parents. If she satisfies the court that she is mature and well enough informed to make intelligently the abortion decision on her own, the court must authorize her to act without parental consultation or consent. If she fails to satisfy the court that she is competent to make this decision independently, she must be permitted to show that an abortion nevertheless would be in her best interests. If the court is persuaded that it is, the court must authorize the abortion. If, however, the court is not persuaded by the minor that she is mature or that the abortion would be in her best interests, it may decline to sanction the operation.

Id. at 647-48. Justice Powell, however, also recognized countervailing interests in allowing parental consultation:

> There is, however, an important state interest in encouraging a family rather than a judicial resolution of a minor's abortion decision. Also, . . . parents naturally take an interest in the welfare of their children – an interest that is particularly strong where a normal family relationship exists and where the child is living with one or both parents. These factors properly may be taken into account by a court called upon to determine whether an abortion in fact is in a minor's best interest. *If, all things considered, the court determines that the abortion is in the minor's best interests, she is entitled to court authorization without any parental involvement.* On the other hand, the court may deny the abortion request of an immature minor in the absence of consultation if it concludes that her best interests would be served thereby, or the court may in such a case defer decision until there is parental consultation in which the court may participate.

Id. at 648 (emphasis supplied).

It is clear from Justice Powell's opinion in *Bellotti* that he envisioned "parental involvement" in an immature minor's decision to have an abortion after she sought a waiver of consent in a judicial bypass hearing, if the court conducting the hearing believed that such involvement was in her best interests. In striking down the Nevada parental notice law, the Ninth Circuit, quoting the emphasized language from Justice Powell's opinion in

Bellotti, concluded that "the Nevada statute impermissibly narrows the *Bellotti* 'best interests' criterion, and is unconstitutional." *Glick*, 937 F.2d at 439. This was erroneous because, in quoting the emphasized language out of context, the *Glick* court failed to recognize that the *Bellotti* plurality opinion expressly indicated "all things considered" included the question as to whether parental consultation was appropriate and that, where parental notice was deemed in the best interests of the minor, the bypass decision-maker possessed the discretion to direct consultation *before* disposing of the petition on its merits. *Bellotti* thus stands for the unremarkable proposition that the parental consultation issue, even under a consent statute, is determined with reference to whether an abortion without such consultation would be in the minor's best interests. *Glick's* conclusion was also erroneous because the "parental involvement" mandated in the Massachusetts statute struck down in *Bellotti* was an integral component of a *consent* statute, not a *notice* statute. The ultimate issue to be decided under the Massachusetts statute was whether an abortion would be in the minor's best interests, not whether notice to her parents of her intention to obtain an abortion would be in her best interests. Contrary to the implication of the Ninth Circuit's opinions in *Glick* and *Wicklund*, no decision of this Court equates notice statutes with consent statutes for purposes of constitutional analysis.[4] The Court, in fact, has rejected that equation.

---

[4] Neither *Ashcroft* nor *Akron Center I* stands for the contrary. At issue in *Ashcroft* was the constitutionality of a parental consent, not a parental notice, statute. The Court noted that the State had not appealed the Eighth Circuit's judgment holding unconstitutional a notice requirement in the same law. 462 U.S. at 491 n.17. In *Akron Center I*, the Court considered the constitutionality of a provision in an ordinance that mandated parental consent but which did not establish a judicial bypass procedure. 462 U.S. at 439-41. Although plaintiffs did not appeal the Sixth Circuit's judgment upholding another provision in the same ordinance requiring parental notice, *id.* at 439 n.29, the Court, citing various concurring and dissenting opinions in *H.L. v. Matheson*, 450 U.S. 398 (1981), stated in *dicta* that a law requiring notice to the parents of a mature minor would be unconstitutional, *id.* at 441 n.31, a question not presented here.

In *H.L. v. Matheson*, 450 U.S. 398 (1981), this Court held that a Utah statute requiring a physician to give notice, if possible, to the parents of a pregnant minor prior to performing an abortion could be constitutionally applied to an immature, unmarried, unemancipated minor who lived with and was dependent upon her parents and who made no claim that notification of her parents would not be in her best interests. In upholding the law, as applied, the Court noted that "[t]he Utah statute gives neither parents nor judges a veto power over the minor's abortion decision," *id.* at 411, and expressly rejected the dissenters' argument that "a requirement of notice to the parents is the functional equivalent of a requirement of parental consent." *Id.* at 411 n.17.

In *Hodgson*, the Court upheld the Minnesota two-parent notice statute with a judicial bypass. A clear majority of the Court agreed that the standards for determining the validity of consent statutes do not apply to notice statutes. Writing for himself, Chief Justice Rehnquist, Justice White and Justice Scalia, Justice Kennedy stated:

> The difference between notice and consent was apparent to us before and is apparent now. Unlike parental consent laws, a law requiring parental notice does not give any third party the legal right to make the minor's decision for her, or to prevent her from obtaining an abortion should she choose to have one performed. We have acknowledged this distinction as "fundamental," and as one "substantially modify[ing] the federal constitutional challenge." [Citations omitted]. The law before us does not place an absolute obstacle before any minor seeking to obtain an abortion, and it represents a considered weighing of the competing interests of minors and their parents.

497 U.S. at 496 (Kennedy, J., concurring in the judgment in part and dissenting in part). Justice Stevens, joined by Justice O'Connor, stated that "the Court . . . has never challenged a State's reasonable judgment that the decision [of a minor to obtain an abortion] should be made after notification to and consultation with a parent." *Id.* at 445 (Opinion of Stevens, J.). In another part of his opinion which Justice O'Connor joined, Justice Stevens stated further that "a requirement that a minor wait 48 hours after notifying a single parent of her intention to get an abortion would reasonably further the legitimate state interest in ensuring that the minor's decision is knowing and intelligent." *Id.* at 448.

Although the Court has not yet decided "the specific question whether a judicial bypass procedure is necessary in order to save the constitutionality of a one-parent notice statute," *Akron Center II*, 497 U.S. at 522 (Stevens, J., concurring in part and concurring in the judgment), and has declined an invitation to consider this issue, *see*

Janklow v. Planned Parenthood, Sioux Falls Clinic, 116 S.Ct. 1582 (1996), Justice Stevens has expressed the view that in a notice statute, "the State must provide an adequate mechanism for cases in which the minor is mature or *notice would not be in her best interests.*" *Akron Center II*, 497 U.S. at 522 (emphasis supplied). Thus, the standard, according to Justice Stevens, is *not* whether the *abortion* would be in the minor's best interests, but whether *notification* would be in her best interests.

Finally, it must be emphasized that the "best interests" standards in the Minnesota and Ohio laws are virtually the same as the standard in the Montana law. The Minnesota law upheld in *Hodgson* allows a judicial waiver if the court determines that "the performance of an abortion upon [the pregnant minor] without notification of her parents, guardian, or conservator would be in her best interests . . . . " Minn. Stat. Ann. § 144.343(6)(c)(i) (West 1989), quoted in *Hodgson*, 497 U.S. at 427 n.9. The Ohio law upheld in *Akron Center II* allows a waiver upon a finding that "notification of the parents, guardian, or custodian of the [pregnant minor] is not in the best interest of the [minor]." Ohio Rev. Code Ann. § 2151.85(C)(2) (Anderson 1994), summarized in *Akron Center II*, 497 U.S. at 508. Those standards, which focus on whether *notice*, not the *abortion*, would be in the minor's best interests, are the same as that contained in the Montana statute. *See* Mont. Code Ann. § 50-20-212(5)(b) (notice to the parent of an immature, pregnant minor of her intention to obtain an abortion may be waived if the minor demonstrates that "notification is not in [her] best interests"). The court of appeals ignored the substantial similarity in language between the Montana parental notice statute, which it

struck down, and the Minnesota and Ohio parental notice statutes, which this Court upheld. In so doing, the court erred.[5]

CONCLUSION

For the foregoing reasons, *amici curiae*, States respectfully request this Honorable Court to grant Montana's petition for *certiorari* and set the case down for briefing and argument or, in the alternative, grant the petition and summarily reverse the judgment of the court of appeals on the authority of this Court's decisions in *Hodgson v. Minnesota* and *Ohio v. Akron Center for Reproductive Health*.

Respectfully submitted,

DON STENBERG, #14023
Attorney General

L. STEVEN GRASZ, #19050
Deputy Attorney General
2115 State Capitol
Lincoln, NE 68509-8920
Tel: (402) 471-2682

[5] In addition to the Argument raised in this Brief, *amici* also adopt Montana's analysis of the "undue burden" standard as articulated by the Joint Opinon in *Casey v. Planned Parenthood of Southeastern Pennsylvania*, 505 U.S. 833 (1992).